

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:)
)
David Andrew Garrett) Case No. 07A000649
)
Applicant.)
)
Serve at:)
)
1010 Thoreau Court # 39)
Creve Coeur, MO 63146)

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On November 28, 2007, Kathryn Turner, as Chief Investigations Counsel for the Investigations Section of the Consumer Affairs Division, submitted a petition to the Director alleging cause for refusing to issue the insurance producer license of David Andrew Garrett ("Applicant").

On December 7, 2007, the Director ordered a hearing on the petition, which was then held on December 18, 2007. The Consumer Affairs Division was represented by Senior Enforcement Counsel Mary Erickson and the Applicant appeared *pro se*. The Consumer Affairs Division called four witnesses to testify and the Applicant testified on his own behalf.

After reviewing the petition, the investigative report, and the testimony and other evidence adduced at the hearing, and being fully advised in the premises, the Director issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. David Andrew Garrett ("Applicant") is a Missouri resident with an address of 1010 Thoreau Court, Creve Coeur Missouri 63146.
2. On September 5, 2007, David Andrew Garrett ("Applicant") filed a Uniform Application for Individual Insurance Producer License ("Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking licensure as an insurance producer.

3. Question 39-1. of the Application asks,

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?
4. Applicant checked the "Yes" answer to this question.
5. On December 5, 2002, Applicant pled guilty to the offense of "Conspiracy to Possess With the Intent to Distribute..." (MDMA, Ecstasy), a felony, in violation of 21 U.S.C. 846, in the United States District Court for the Eastern District of Missouri.
6. Applicant was sentenced to three (3) years probation and was ordered to pay \$100.00 in criminal monetary penalties. Applicant was released from probation on December 4, 2005.
7. The Applicant has not accepted responsibility for his conduct in the crime, and his testimony at the December 18 hearing describing his involvement in the crime to which he pled guilty was not credible.
8. This order is in the public interest.

CONCLUSIONS OF LAW

9. Section 375.141.1 RSMo (Cum. Supp. 2006) provides, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(6) Having been convicted of a felony or crime involving moral turpitude.
10. Applicant was convicted, on a plea of guilty, of the offense of "Conspiracy to Possess With the Intent to Distribute..." (MDMA, Ecstasy), a felony, in violation of 21 U.S.C. § 846, a ground for refusal to issue an insurance producer license under §375.141.1 RSMo (Cum. Supp. 2006).
10. Applicant may be disqualified and therefore, refused an insurance producer license, based upon the provisions of §375.141.1(6), RSMo (Cum. Supp. 2006) for the conviction of a felony. The current statute is to be properly applied to licensing actions. *Huddlestonsmith v. Director of Insurance*, No. 06-0161 DI (Mo. Admin. Hearing Comm'n November 13, 2006); *Finke v. Cummings*, Case No. 06AC-CC01084, March 23, 2007.

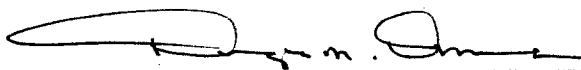
11. As §375.141, RSMo (Cum. Supp. 2006) provides that the director “may” refuse a license, the director has discretion under this section for disqualifying Applicant on the basis of the conviction of a felony. *State Bd. Of Regis’n for the Healing Arts v. Finch*, 514 S.W. 2d 608 (Mo. App., E.D. 1984); *Rochelle K. Whatley v. Director of Insurance*, No. 05-1074 DI (Mo. Admin. Hearing Comm’n January 3, 2007). In applying this discretion, the director should consider all of the facts and circumstances surrounding disqualifying event and the relevant history of the Applicant since the time of the event. One consideration in an application involving a felony conviction is the Applicant’s acceptance of responsibility for the conduct that gave rise to the conviction. The Director found the Applicant did not accept responsibility for his conduct and was not credible as a witness. The Applicant’s insincerity was also evident in his testimony describing the very recent failure to disclose in his Application a recent administrative action by the State of Illinois. The Applicant’s lack of sincerity is accompanied by a lack of regard for matters of great significance. These characteristics would place insurance consumers at risk, as the public would expect to be able to rely on a licensed insurance producer’s attention to matters of import.
14. The Director, in making this decision, has considered all of the information within the whole record of the Application as presented by the Applicant as well as the testimony and evidence adduced at the December 18 hearing. Any failure to specifically include a ground for disqualification, or to specifically address a piece of evidence, information, position or argument of any party in this order does not indicate that the Director has failed to consider relevant information from the hearing, and, in fact, all of the testimony and evidence was considered in reaching this decision.
15. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the issuance of the insurance producer license of Applicant David Andrew Garrett is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 22nd DAY OF January, 2008.



DOUGLAS M. OMMEN
DIRECTOR


NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2008, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.



Karen Crutchfield
Senior Office Support Staff